THE HON'BLE SRI JUSTICE K.C. BHANU

On Tuesday, twentieth day of September

Two thousand and five.

W.P. NO. 15764 of 2005

Khudrath Ali Khan @ Wasim.

…….Petitioner.

And

Government of Andhra Pradesh, Home (PSC) Department, Secretariat Hyderabad, represented by Principal Secretary to Government and another.

…….Respondents.

O R D E R:

This writ petition is filed by the petitioner to quash the proceedings of the 1st respondent, passed in Memo No.18438/PSC/A2/2005-3 dated 4.7.2005, confirmling the order passed by the 2nd respondent in SB(1) No.4/EXT/S-1/2005, dated 28.5.2005, wherein the externment order was passed against the writ petitioner directing him that he shall remove himself immediately from the limits of Hyderabad City for a period of six months from the date of receipt of the said order.

2) Before adverting to the question as to whether the impugned Order issued by the 1st respondent confirming the order of the 2nd respondent suffers from any legal infirmity requiring any interference as such by this Court, in exercise of its writ jurisdiction, it may be necessary, briefly, to note the relevant facts leading to the filing of this writ petition: The 2nd respondent i.e. the Commissioner of Police issued a notice dated 14.2.2005 to the writ petitioner calling upon him to give explanation as to why he should not be ordered to remove himself from the limits of Hyderabad city under Section 26(7) of Hyderabad City Police Act, 1348 Fasli (for short 'the Act'), on the grounds of the petitioner indulging in commission of offences by use of force, affecting breach of peace and tranquility for which the petitioner had submitted his written explanation stating that in the notice there is no material rather no grounds against him on which the proposed action is proposed and further stated that the scheme of Section 26(1) of the Act is only preventive in nature and the notice issued is misconceived. The petitioner further pleaded that he was falsely implicated by the police in eleven cases and except two cases all the cases have been acquitted by the competent criminal courts and that he has not been engaged any commission of offences involving breach of peace and tranquility and he being engaged with fruit and vegetable business. Hence he prays to drop the further proceedings.

3) The learned counsel for the petitioner contended that almost in all the cases the petitioner was acquitted by the competent Court of criminal jurisdiction that the 2nd respondent has not considered the explanation of the writ petitioner and that the false cases have registered so as to pass the externment order that the grounds for the proposed externment relates to 1996 to 1998 and 2001 and therefore, he prays to allow the writ petition.

4) On the other hand, the learned Government Pleader for Home contended that basing on the evidence available on record, the petitioner was not only indulging in civil and family disputes in the area but also creating breach of peace in the locality and that the cases have been registered against the writ petitioner only on the ground of complaints from the victims and hence he prays

to dismiss the writ petition.

5) The Commissioner of Police issued a notice dated 14.2.2005, calling upon the writ petitioner to give explanation as to why he should not be ordered to remove himself from the limits of Hyderabad city under Section 26(7) of Hyderabad City Police Act, 1348 Fasli (for short 'the Act'). The grounds for proposed externment of the petitioner had been mentioned in the notice for which the petitioner has given explanation stating that except in two cases, all the cases have been acquitted by the competent criminal courts and that he has not been engaged in any commission of offences involving breach of peace and tranquility and hence prays to drop the further proceedings. As seen from the material available on record thirteen cases have been registered in Falaknuma, Rajendra Nagar and Shamsheergunj Police stations. According to the petitioner, he was acquitted in nine cases and three witnesses were examined on behalf of the petitioner. According to the police, all the cases ended in acquittal as the witnesses turned hostile due to apprehension of danger to their lives and property from the petitioner. Even the witnesses on behalf of the petitioner have stated that they have no complaint against the petitioner because of apprehension of the threat to their lives and property from the writ petitioner. Therefore, the Commissioner of Police passed externment order directing him to leave himself from the limits of Hyderabad City for a period of six months.

6) Challenging the said order, an appeal was preferred by the writ petitioner before the Government of Andhra Pradesh, Home (PSC) Department (1st respondent herein), which was dismissed by its order dated 4.7.2005. The reason for dismissal of his appeal is that the victims are hesitant to give any complaint against the writ petitioner for his high handedness and also due to apprehension of danger to their lives and properties. Several cases were registered in the year 1996, 1997, 1998 and 2001, under various provisions of the Indian Penal Code. In the year 2004, another case was registered, where under a complaint is lodged against the writ petitioner stating that the writ petitioner threatened the husband of the complainant therein and warned them to evict the house within a week, otherwise they would kill her husband. The

brother of the petitioner was arrested on 24.7.2004, whereas the petitioner was surrendered before the Court on 26.7.2004. As on the date of externment only two cases were pending and nine cases were acquitted for the reason that the witnesses (defacto-complainants) were turned hostile due to fear of the petitioner. In all these circumstances, he cannot be brushed aside lightly on filing the petition. On the assessment of the over all situation, the commissioner passed the impugned order.

7) The learned Government Pleader for Home, on behalf of the respondents, relied upon a decision reported in **State of NCT of Delhi and another Vs. Sanjeev alias Bittoo**[1] wherein it is held:

> "The satisfaction of the authority can be interfered with if the satisfaction recorded is demonstratively perverse based on no evidence, misreading of evidence or which a reasonable man could not form or that the person concerned was not given due opportunity resulting in prejudice. To that extent, objectivity is inbuilt in the subjective satisfaction of the authority."

It is further held:

> "Administrative action is stated to be referable to broad area of governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. The scope of judicial review of administrative orders is rather limited. The consideration is limited to the legality of decision-making process and not legality of the order per se. The test is to see whether there is any infirmity in the decision-making process and not in the decision itself. Mere possibility of another view cannot be ground for interference."

8) The order of the Commissioner of Police is not shown to be perverse or that there was no material existing so as to pass the impugned proceedings. It is stated that the public are not willing to give evidence for reasons of apprehension for their lives and properties. Though, he was acquitted in nine

criminal cases, but two cases were pending and another case was registered. When the witnesses turned hostile in criminal cases of robbery, extortion, attempting to commit murder etc., the reasons are obvious. It may be due to fear of the petitioner. Therefore, the commissioner of police rightly ordered externment for a period of six months. So, the said order was confirmed by the appellate authority under impugned order and the same does not suffer from any incurable infirmity, so as to call for interference of this Court.

9) The writ petition is devoid of merits and is dismissed. No order as to costs.

Justice K.C.BHANU.

20th September 2005.

BCS